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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,252	08/22/2003	James G. Owen	OWEN 2 00002	9418
7590 04/30/2007 Philip J. Moy, Jr., Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518			EXAMINER CAJILIG, CHRISTINE T	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 04/30/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,252

Applicant(s)

OWEN, JAMES G.

Examiner

Christine T. Cajilig

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 and 21-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 14-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/12/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, Species 1 – Figure 5 in the reply filed on 4/19/07 is acknowledged.

Claims 11-13 and 21-33 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II and Species 2-12, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/19/07.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cranfill et al. (U.S. Patent No. 6,318,293).

Regarding claim 14, Cranfill et al. discloses a guard, the guard comprising: a first leg (a) including a magnetic portion (12); a second leg (b) attached to said first leg such that the guard has a substantially L-shaped configuration in cross-section.

Regarding claim 17, Cranfill et al. discloses the structure discussed above and further discloses that the magnetic portion (12) of the first leg (a) runs substantially the entire longitudinal length of the first leg.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent No. 3,922,408).

Regarding claim 1, Smith discloses a guard (52) comprising an elongated section of material including: a surface portion (56) substantially defining a plane and adapted to be affixed to a vertical surface, and a gap-covering portion (54) extending from the plane of said surface portion in a fixed angular relationship but does not disclose that the gap covering portions extends at a distance of at least about 0.5 inch measured orthogonally from said surface portion. It would have been obvious to modify the guard of Smith to have the gap covering portions extend at a distance of at least about 0.5 inch measured orthogonally from said surface portion since such a modification would have involved a mere change in the size of the components and would allow for the guard have more surface area for attachment. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 2, Smith discloses the structure discussed above and further discloses that said surface portion (56) includes an attachment member (42,38) capable of affixing the guard to the vertical surface of a first device.

Regarding claim 3, Smith discloses the structure discussed above and further discloses that the attachment member (38) comprises an adhesive material.

Regarding claims 6 and 7, Smith discloses the structure discussed above, but does not disclose that the elongated section or the gap-covering portion has a longitudinal length of about 24 to 25 inches. It would have been obvious to modify the guard of Smith to have the elongated section or the gap-covering portion with a longitudinal length of about 24 to 25 inches since such a modification would have involved a mere change in the size of the components and would allow for the guard to be used where longer strips of the guard is needed. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 8, Smith discloses the structure discussed above, but does not disclose that the surface portion has a height of about 1 to 2 inches. It would have been obvious to modify the guard of Smith to have the surface portion with a height of about 1 to 2 inches since such a modification would have involved a mere change in the size of the components and would allow for the guard have more surface area for attachment. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 9, Smith discloses the structure discussed above and further discloses that the gap-covering portion comprises a material that can be easily cut (Col 2, Ln 58). The manner in which the device is cut (i.e. by household cutting materials such as scissors or a utility knife) is intended use and, therefore, is not given any patentable weight.

Regarding claim 10, Smith discloses the structure discussed above and further discloses that the gap-covering portion (54) extends away from an edge of the surface portion (56).

Claims 1, 2, 4, 5, and 15, 16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cranfill et al. (U.S. Patent No. 6,318,293).

Regarding claim 1, Cranfill et al. discloses a guard (8) comprising an elongated section of material including: a surface portion (a) substantially defining a plane and adapted to be affixed to a vertical surface, and a gap-covering portion (b) extending from the plane of said surface portion in a fixed angular relationship but does not disclose that the gap covering portions extends at a distance of at least about 0.5 inch measured orthogonally from said surface portion. It would have been obvious to modify the guard of Cranfill et al. to have the gap covering portions extend at a distance of at least about 0.5 inch measured orthogonally from said surface portion since such a modification would have involved a mere change in the size of the components and would allow for the guard have more surface area for attachment. A change in size is

generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 2, Cranfill et al. discloses the structure discussed above and further discloses that said surface portion (a) includes an attachment member (12) capable of affixing the guard to the vertical surface of a first device.

Regarding claim 4, Cranfill et al. discloses the structure discussed above and further discloses that the attachment member comprises a magnetic material (12).

Regarding claim 5, Cranfill et al. discloses the structure discussed above and further discloses that the attachment member comprises a magnetic laminate (12) running substantially the entire length of the surface portion.

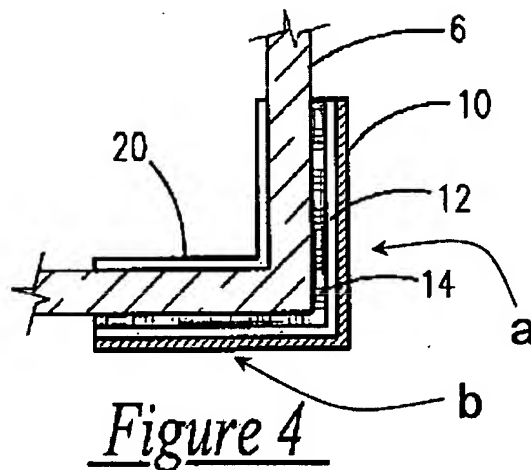
Regarding claims 15 and 16, Cranfill et al. discloses the structure discussed above, but does not disclose that the guard or the second leg has a longitudinal length of about 24-25 inches. It would have been obvious to modify the guard of Cranfill et al. to have the elongated section or the gap-covering portion with a longitudinal length of about 24 to 25 inches since such a modification would have involved a mere change in the size of the components and would allow for the guard to be used where longer strips of the guard is needed. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 18, Cranfill et al. discloses the structure discussed above, but does not disclose that the second leg extends approximately 1 to 2 inches away from said first leg. It would have been obvious to modify the guard of Cranfill et al. to have

the surface portion with a height of about 1 to 2 inches since such a modification would have involved a mere change in the size of the components and would allow for the guard have more surface area for attachment. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 19, Cranfill et al. discloses the structure discussed above, and further discloses that the second leg comprises a material (plastic, flexible magnet, and felt) that can obviously be easily cut. The manner in which the device is cut (i.e. by household cutting materials such as scissors or a utility knife) is intended use and, therefore, is not given any patentable weight.

Regarding claim 20, Cranfill et al. discloses the structure discussed above, but does not disclose that the second leg has a thickness of about 0.125 inch. It would have been obvious to modify the guard of Cranfill et al. to have the second leg with a thickness of about 0.125 inch since such a modification would have involved a mere change in the size of the components and would allow for a more stronger/durable guard. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).



Cranfill et al. (U.S. Patent No. 6,318,293)

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zeilinger (US 4706427) a corner seal; Hill (US 5775045) a door guard; Jensen (US 5313754) a corner guard; Gold et al. (US 4561223) a fastening system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CTC *CR*
4/24/07

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